

HOUSE BILL NO. 489

INTRODUCED BY D. KOTTEL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA SECOND CHANCE ACT TO ALLOW FOR THE REDUCTION OF SENTENCES FOR CERTAIN FELONS; ESTABLISHING PROVISIONS FOR ELIGIBILITY AND ESTABLISHING PROCEDURES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Montana Second Chance Act".

NEW SECTION. **Section 2. Authorization -- eligibility.** (1) A person convicted of a felony who meets the criteria of subsection (2) may petition to have the sentence imposed for the conviction of that offense reviewed and reduced within the limits fixed by law pursuant to [section 3].

(2) To be eligible to petition for a reduced sentence pursuant to subsection (1), a person:

(a) must have been convicted of a single felony as an adult;

(b) may not have committed a sex-related offense as defined in Title 45, chapter 5, part 5;

(c) must have completed an education-related achievement and one other achievement listed in 46-23-1027(2)(a) through (2)(d), (2)(f), and (2)(g);

(d) must have held continuous employment for at least 3 years except for any break in employment that:

(i) was not the fault of the person;

(ii) resulted in eligibility for unemployment insurance; or

(iii) occurred while the person was attending an educational program for the equivalent of at least three-quarters time; and

(e) must have completed 4 years of supervision as a probationer or parolee without significant violation of the conditions set by the court or the parole board.

NEW SECTION. **Section 3. Sentence reduction procedure.** (1) A person convicted of a felony who

1 meets the criteria of [section 2] may petition the court that imposed the sentence or the review division established
2 in 46-18-901 for a reduced sentence.

3 (2) Unless the petition and the files and records of the case conclusively show that the person is not
4 entitled to relief, the court or review division shall cause notice of the petition to be served on the county attorney
5 in the county in which the conviction took place and order the county attorney to file a responsive pleading to the
6 petition. Following its review of the responsive pleading, the court or review division may either dismiss the
7 petition as a matter of law for failure to state a claim for relief or proceed to determine the issue.

8 (3) The court or review division shall order the office of state public defender, provided for in 47-1-201,
9 to assign counsel for a person who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and
10 the Montana Public Defender Act, Title 47, chapter 1.

11 (4) Subject to subsection (2), a hearing to review the sentence and rehabilitation of the person must be
12 scheduled:

13 (a) by the court that imposed the sentence; or

14 (b) pursuant to 46-18-901 if the petition is made to the review division.

15 (5) The court or review division may consider any educational, employment, and volunteer activities in
16 which the person participated, as well as the completion of a substance abuse treatment program, as evidence
17 of qualification for a reduction in sentence.

18 (6) If the court or review division finds that the person has made a significant effort at rehabilitation and
19 has become a productive citizen, the court or review division may:

20 (a) grant a conditional discharge to the petitioner;

21 (b) impose a lesser sentence commensurate with the level of rehabilitation; or

22 (c) allow the sentence to stand.

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24 **NEW SECTION. Section 4. Decision -- finality.** The decision of the court or review division in each
25 case is final, and the reasons for the decision must be stated in the decision. The original of each decision must
26 be sent to the clerk of the court for the county in which the judgment was rendered, and a copy must be sent to
27 the judge who imposed the sentence reviewed if the sentence was reviewed by the review division, the person
28 sentenced, the defense counsel, the county attorney, and the principal officer of the program or institution where
29 the person is confined.

1 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified
2 as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [sections 1 through
3 4].

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5 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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